

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 NOETIC SPECIALTY INSURANCE  
11 COMPANY,

12 Plaintiff,

13 v.

14 THE LAW OFFICES OF JAMES W.  
15 TALBOT, PLLC, *et al.*,

Defendant.

CASE NO. C21-1067-JCC

ORDER

16 This matter comes before the Court on motion of Defendants Coronus XES, Ltd.  
17 (“Coronus”) and Glomad Services, Ltd. (“Glomad”) to dismiss or stay (Dkt. No. 11) Plaintiff  
18 Noetic Specialty Insurance Company’s (“Noetic”) declaratory relief action (Dkt. No. 1). Having  
19 thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument  
20 unnecessary and DENIES the motion.

21 **I. BACKGROUND**

22 This federal action arises out of an underlying state court action involving the insured,  
23 James W. Talbot and the Law Offices of James W. Talbot (collectively “Talbot”). (*See* Dkt. 17 at  
24 1–3.) The Court will summarize the alleged facts as relevant to the limited issues raised by

1 Defendants' motion.<sup>1</sup>

2 Talbot filed suit in state court over unpaid legal fees. (*Id.* at 2.) On June 2, 2020, Coronus  
 3 and Glomad counterclaimed for legal malpractice. (Dkt. No. 1 at 5, 12.) On June 24, 2020,  
 4 Talbot filed a response to the counterclaim. (Dkt. No. 1–3.) A year later, following several  
 5 pretrial motions, the state court entered default judgment against Talbot on the counterclaim for  
 6 \$868,003.19. (Dkt. No. 1–6.) Talbot appealed.<sup>2</sup>

7 Talbot did not notify Noetic of the counterclaim or judgment against him until June 22,  
 8 2021, when he sent Noetic an email seeking defense and indemnity. (Dkt. No. 1 at 10.) Nor did  
 9 he disclose the counterclaim on the August 20, 2020 renewal application he submitted to Noetic,  
 10 which included written affirmation that no professional liability claims had been made against  
 11 him in the past year. (Dkt. Nos. 1 at 8, 1-4, 1-5.) Upon receipt of Talbot's email, Noetic sent him  
 12 a letter denying coverage due to his failure to notify them of the counterclaim as required under  
 13 his insurance policy (Dkt. No. 1-8). (*See* Dkt. No. 1-7.)

14 Talbot did have earlier coverage issued by Noetic (Dkt. No. 1 at 13), but Section VI of  
 15 that policy required Talbot to report the counterclaim to Noetic at the time he was served and  
 16 disclose it on the renewal application. (*Id.* at 14.)

17 Noetic filed an action in this Court seeking declaratory judgment that it has no duty to  
 18 defend or indemnify Talbot with respect to the counterclaims in the underlying state court action  
 19 (Dkt. No. 1 at 16.) Defendants Coronus and Glomad now move to dismiss the federal suit under  
 20 *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942), or, in the alternative, to stay the proceedings  
 21 until the resolution of Talbot's state court appeal. (Dkt. No. 11 at 1–2.)

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24 <sup>1</sup> In reviewing the motion, the Court accepts the truth of the facts alleged and draws all  
 25 reasonable inferences from those facts in a plaintiff's favor. *Al-Kidd v. Ashcroft*, 580 F.3d 949,  
 956 (9th Cir. 2009).

26 <sup>2</sup> The Court takes judicial notice of Talbot's pending state court appeal. *See* Fed. R. Evid. 201(b).

1           **II. DISCUSSION**

2           **A. Legal Standard**

3           The Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, empowers federal courts, “[i]n  
 4 a case of actual controversy within [their] jurisdiction,” to “declare the rights and other legal  
 5 relations of any interested party seeking such a declaration[.]” 28 U.S.C. §§ 2201(a). In the  
 6 exercise of that power, federal district courts have “unique and substantial discretion.” *Wilton v.*  
 7 *Seven Falls Co.*, 515 U.S. 277, 286 (1995).

8           In deciding whether to exercise jurisdiction over a declaratory judgment action, the  
 9 district court must consider whether the pending state court proceeding is a better forum.  
 10 *Brillhart*, 316 U.S. at 495. “Ordinarily it would be uneconomical as well as vexatious for a  
 11 federal court to proceed in a declaratory judgment suit where another suit is pending in state  
 12 court presenting the same issues, not governed by federal law, between the same parties.” *Id.*

13           The Ninth Circuit reads *Brillhart* to require a three-prong consideration: the district court  
 14 should (1) avoid needless determination of state law issues, (2) discourage forum shopping, and  
 15 (3) avoid duplicative litigation. *Am. Cas. Co. of Reading, Pennsylvania v. Krieger*, 181 F.3d  
 16 1113, 1118 (9th Cir. 1999). When a party moves for a district court to dismiss a claim for  
 17 declaratory relief, the court must record the basis for its decision. *Gov’t Emps. Ins. Co. v. Dizol*,  
 18 133 F.3d 1220, 1221 (9th Cir. 1997).

19           **B. Application of the *Brillhart* Factors**

20           1. Federal Courts Should Not Needlessly Determine Issues of State Law

21           When “parallel state proceedings involving the same issues and parties [are] pending at  
 22 the time the federal declaratory action is filed, there is a presumption that the entire suit should  
 23 be heard in state court.” *Id.* at 1225. However, there is no presumption in favor of abstention in  
 24 declaratory actions generally, nor in insurance cases specifically. *Id.* at 1226. In *Krieger*, the  
 25 district court granted declaratory relief to a liability insurer that it had no duty to indemnify or  
 26 defend the insured in an underlying tort action. 181 F.3d at 1115–16. The Ninth Circuit held that

1 “[b]ecause the state court case did not include the coverage issue, and because the coverage issue  
 2 in the federal action was not contingent on any further state court proceedings, the district court  
 3 found good cause to continue to exercise its discretion.” 181 F.3d at 1119. The same is true here.  
 4 As Noetic notes, the insurance coverage issue before this Court is not before the state court, or  
 5 contingent on any state court issues. (Dkt. No. 17 at 7.) Thus, a determination of the insured’s  
 6 coverage is not needless.

7 While Defendants argue the issue will be moot if Talbot wins his appeal (see Dkt. Nos.  
 8 11 at 9, 18 at 2), Washington law does not require Noetic to wait until then to seek a  
 9 determination of its duties. *See, e.g., Truck Ins. Exch. v. Vanport Homes, Inc.*, 58 P.3d 276, 282  
 10 (2002) (an insurer may file a declaratory judgment action to clarify its duty to defend to avoid  
 11 potential breach of such duty). The first factor weighs against dismissal or stay of this action.

12       2. Federal Courts Should Discourage Forum Shopping

13 The exercise of jurisdiction over declaratory judgment actions “when there is a pending  
 14 state court case presenting the identical issue . . . encourage[s] forum shopping.” *Cont'l Cas. Co.*  
 15 v. *Robsac Indus.*, 947 F.2d 1367, 1372–73 (9th Cir. 1991), *overruled on other grounds by Dizol*,  
 16 133 F.3d at 1227. If the federal suit is defensive or reactive, that would justify a court’s decision  
 17 not to exercise jurisdiction. *Id.* Defendants briefly note that whether the federal case is “reactive”  
 18 does not depend solely on the time of filing, which here came before the initiation of any state  
 19 garnishment proceeding. (Dkt. No. 11 at 7, citing, *e.g., Balaton Condominium, LLC v. Balaton*  
 20 *Condominium Ass’n*, 2007 WL 2069861, slip op. at 4 (W.D. Wash. 2014).) But Defendants’  
 21 main argument is that Noetic’s counsel filing “numerous. . . declaratory judgment actions in  
 22 []this Court on behalf of insurers” constitutes a “forum shopping decision.” (Dkt. No. 11 at 8.)  
 23 This argument is meritless and unsupported. Availing oneself of diversity jurisdiction is not in  
 24 itself evidence of forum shopping. This factor weighs slightly against dismissal of the action.

25       3. Federal Courts Should Avoid Duplicative Litigation

26       The exercise of jurisdiction over a “federal declaratory suit [that] is virtually the mirror

1 image of the state suit” violates the *Brillhart* principle of avoiding duplicative litigation. *Robzac*,  
2 947 F.2d at 1373. The declaratory action and state suit are mirror images if “[a]ll of the issues  
3 presented by the declaratory judgment action could be resolved by the state court.” *Id.* Exercising  
4 jurisdiction over such actions “waste[s] judicial resources in violation of the third *Brillhart*  
5 factor.” *Id.* Here, as previously discussed, the issues in the federal action are distinct from those  
6 before the state court. The federal action is, therefore, not duplicative litigation. The third factor  
7 supports denying Defendants’ request for a stay and retaining jurisdiction over this action.<sup>3</sup>

8 As such, application of the *Brillhart* factors provides that dismissal or a stay of the  
9 declaratory judgment action is unwarranted.

10 **III. CONCLUSION**

11 For the foregoing reasons, Defendants’ motion to dismiss or, in the alternative, stay (Dkt.  
12 No. 11) is DENIED.

13 DATED this 18th day of November 2021.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE

23 <sup>3</sup> Defendants raise two additional considerations, both without merit. They argue Noetic would  
24 not be prejudiced by defending Talbot because it retains reimbursement rights. (Dkt. No. 18 at  
25 1.) But the parties agree that Noetic has thus far *not* defended Talbot in the underlying action.  
26 (Dkt. Nos. 17 at 12, 18 at 2.) If anything, this points to the urgency in determining if its failure to  
do so breaches its obligations to its insured. Similarly, the Court rejects their assertion that the  
prejudice to Defendants of fighting a “two front war” warrants dismissal or a stay. (Dkt. No. 11  
at 9.)